

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT JOSEPH NJOS, Plaintiff, : CIVIL ACTION NO. 3:12-CV-1252
v. : (Judge Kosik)
THOMAS KANE, et al., Defendants. :

FILED
SCRANTON
JUN 06 2013

MEMORANDUM AND ORDER

PER Th. 6.1
DEPUTY CLERK

AND NOW, THIS 6th DAY OF JUNE, 2013, IT APPEARING TO THE
COURT THAT:

(1) Plaintiff, Scott Njos, a prisoner confined at the United States Penitentiary in Lewisburg, Pennsylvania, filed the instant action on June 27, 2012;

(2) In the original complaint, plaintiff complained about the conditions of his confinement based on the physical conditions at USP- Lewisburg, denial of medical care and deliberate indifference to plaintiff's medical needs, cruel and unusual punishment in violation of the Eighth Amendment, and deprivation of benefits under the Rehabilitation Act, 29 U.S.C. §794. Plaintiff also raised a "negligence and medical malpractice" claim;

(3) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(4) In a Memorandum and Order dated March 6, 2013 (Doc. 15), we adopted a Report and Recommendation of the Magistrate Judge, wherein plaintiff's constitutional claims against Supervisory Defendants Norwood, Bledsoe, Snyder, Rear and Kane were dismissed with prejudice; plaintiff's damages claims against all Defendants in their official capacities were dismissed with prejudice; plaintiff's claim for denial of medical care was dismissed with prejudice against all non-medical

Defendants, namely, Supervisory Defendants Norwood, Bledsoe, Snyder, Rear and Kane, as well as Defendant Correctional Officers Romig, John Doe #1 and John Doe #2; plaintiff's claim for denial of medical care against the Medical Defendants Dr. Pigos and PA Zook were dismissed without prejudice; plaintiff's professional medical malpractice claims under Pennsylvania law against Defendants Dr. Pigos and PA Zook were dismissed; plaintiff's conditions of confinement claims were dismissed without prejudice; plaintiff's Rehabilitation Act claim was dismissed with prejudice as against all of the Defendants in their individual capacities; plaintiff's Rehabilitation Act claim for injunctive relief was dismissed without prejudice; and plaintiff was allowed to file an amended complaint on the Rehabilitation Act claim seeking injunctive relief against a federal agency or federal actor in his official capacity; and, on his Federal Tort Claims Act claim, for "negligence and malpractice";

(5) Plaintiff filed an Amended Complaint on April 29, 2013 (Doc. 18);
(6) In a Report and Recommendation dated May 2, 2013 (Doc. 19), the Magistrate Judge screened the Amended Complaint and recommended that the Defendant, Bureau of Prisons, be dismissed with prejudice, as well as all of the individual defendants, namely, Kane, Norwood, Bledsoe, Snyder, Rear, Romig, John Doe #1, John Doe #2, Dr. Pigos and PA Zook. The Magistrate Judge also recommended that Plaintiff be allowed to proceed with his Amended Complaint only with respect to his negligence claim and claim of ordinary negligence medical malpractice against defendant United States under the Federal Tort Claims Act ("FTCA") and that the Clerk of Court be directed to add the United States as a defendant;

(7) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(8) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. §636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

(9) We have considered the Magistrate Judge's Report and we concur with his recommendation that plaintiff be allowed to proceed with respect to his negligence claim and claim of medical malpractice against the United States under the FTCA and that the Bureau of Prisons and all individual defendants be dismissed;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated May 2, 2013 (Doc. 19) is **ADOPTED**;

(2) The Bureau of Prisons and individual defendants, Kane, Norwood, Bledsoe, Snyder, Rear, Romig, John Doe #1, John Doe #2, Dr. Pigos and PA Zook are **DISMISSED** with prejudice;

(3) The Clerk of Court is directed to **ADD** the United States as a defendant;

(4) Plaintiff is allowed to proceed with his Amended Complaint only on the negligence and ordinary negligence medical malpractice claims against the defendant, United States, under the FTCA, as outlined in the Report and Recommendation; and

(5) The above-captioned action is **REMANDED** to the Magistrate Judge for further proceedings.


Edwin M. Kosik
United States District Judge